

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Rule making related to falconry

The Natural Resource Commission hereby amends Chapter 101, “Falconry Regulations,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 455A.5(6) and 481A.48(3).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 481A.48(3).

Purpose and Summary

Chapter 101 regulates the capture and use while hunting (as a method of take) of federally protected raptors in Iowa. Raptors are migratory and therefore subject to the international Migratory Bird Treaty Act (MBTA), which is overseen by the U.S. Fish and Wildlife Service (USFWS). These amendments add five new Peregrine falconry permits for eligible falconers to obtain via a lottery and also establish special releasing and reporting requirements for any banded (e.g., tagged) raptors of any kind.

These Peregrine falconry permits provide a new recreational opportunity for Iowans. Peregrine falcons were listed as endangered on the federal endangered species list in 1970 when the species’ population plummeted due to DDT use in the 1940s, 1950s, and 1960s. The species recovered in subsequent decades and was removed from the list in 1999. The USFWS has determined that the species, particularly the northern management population, is now sufficiently stable to support a limited take and has authorized the nation’s four flyway zones to issue permits to their member states. Iowa is part of the Mississippi Flyway, whose oversight council has decided to allocate its 48 total available permits roughly equally to all ten of its member states (hence Iowa’s 5 permits). If the Commission does not amend Chapter 101 to include these permits, these 5 permits will be distributed to other states.

The amendments limit eligibility for the Peregrine permit lottery to either Iowa master falconers or Iowa general falconers with at least five consecutive years of field experience. This qualification is based on the anticipated (large) interest in these permits and the Peregrine’s fairly recent removal from the endangered species list. All other requirements will mimic those for other allowable raptors in Iowa.

The permit will authorize the take of wild, unbanded “passage” (i.e., migratory) Peregrines under one year of age between September 20 and October 20, as authorized by the governing federal regulations (see 82 Fed. Reg. 42700-42701 (Sept. 11, 2017)). Passage Peregrines are those birds that originate from a nesting range north of Iowa extending all the way to the Arctic; USFWS, in consultation with the Canadian Wildlife Service, has determined that this population has the largest and most stable numbers.

In addition, the amendments require the immediate release and reporting to the Department of Natural Resources (Department) within 48 hours of any captured raptor that is banded, whether a Peregrine or some other eligible species open to take. Banded raptors have been tagged for monitoring and should not be removed from the wild so that they can continue to serve as an important part in ongoing research.

Lastly, the species names of a small number of permitted wild raptors for falconry are updated in order to reflect current nomenclature for these birds.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 14, 2018, as **ARC 3621C**. A public hearing was held on March 6, 2018, at 12 noon in

Conference Room 3 E&W, Wallace State Office Building, Des Moines, Iowa. No comments were received at the public hearing.

Twenty-two individuals provided the following comments: 17 preferred no lottery (allowing all qualified falconers the opportunity to capture a bird until the five permits are filled), 2 were supportive of adding Peregrine falcon permits if adequate monitoring of the population ensures no additional harm from falconry or other environmental stressors, 2 would like any general falconer to be able to apply for a permit regardless of experience, 1 would move the lottery from August to April to allow additional planning time, 1 would like additional species to be included in falconry, and 1 would like fewer permits to be issued in Iowa with the remainder of Iowa's permits going to other states.

In addition to the rule-making public comment period, the Department held its annual wildlife listening session (WLS) at 19 locations across the state on February 21, 2018. The WLS is an opportunity for all types of hunters and trappers to provide general input on any wildlife-related topic. There were no comments received regarding this rule making during the WLS.

Although a significant number of individuals requested that the Commission allow all qualified falconers to attempt to trap Peregrine falcons until the quota of five has been taken instead of managing the permits through a lottery, the Commission believes that a lottery is the proper way to initially implement Peregrine falcon permitting in Iowa. A quota is in place because, while the species has increased to the point of allowing for a limited level of take, Peregrine falcon populations are still far lower than common species like the Red-tailed hawk. Capturing and handling wild birds is demonstrated to increase stress hormone levels in the birds, which translates to an increased risk of death. The Commission wants to ensure that no more than the five permitted birds are caught and handled during the take period. The lottery system provides a cautious balance of opportunity to capture birds by falconers while limiting the risks and associated stress involved with unnecessary captures. Assuming that Peregrine falcon populations continue to increase, this issue may be revisited at a future date.

Changes from the Notice of Intended Action have been made. As mentioned in the rule-making summary, species names have been updated to reflect current nomenclature. Also, subrule 101.4(1) has been revised to more clearly reflect the intent that only currently active, experienced falconers are eligible for the lottery.

Adoption of Rule Making

This rule making was adopted by the Commission on April 12, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 13, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 571—101.1(481A), introductory paragraph, as follows:

571—101.1(481A) Falconry regulations. No person may take, transport, or possess any raptor without having first obtained a valid state/federal falconer's permit. Falconry permit holders shall comply with the department's rules and with the current Code of Federal Regulations pertaining to falconry. Only the following raptors may be taken from the wild: American kestrel, Cooper's hawk, Ferruginous hawk, ~~Goshawk~~ Northern goshawk, Great horned owl, Gyrfalcon, ~~Harris'~~ Harris's hawk, Merlin, Peregrine falcon, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk. Raptors taken from the wild shall not be sold, bartered or traded. All wild raptors legally trapped or taken by a resident or nonresident falconer must be marked with an Iowa marker band provided by the department.

ITEM 2. Amend rule 571—101.3(481A), introductory paragraph, as follows:

571—101.3(481A) Taking and possession provision. The taking of ~~raptors~~ American kestrel, Cooper's hawk, Ferruginous hawk, Northern goshawk, Great horned owl, Gyrfalcon, Harris's hawk, Merlin, Prairie falcon, Red-tailed hawk, Rough-legged hawk, and Sharp-shinned hawk from the wild by resident falconers shall be limited to the following conditions:

ITEM 3. Renumber subrule **101.3(8)** as **101.3(9)**.

ITEM 4. Adopt the following new subrule 101.3(8):

101.3(8) Previously banded birds. Any raptor captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

ITEM 5. Renumber rules **571—101.4(481A)** to **571—101.6(481A)** as **571—101.5(481A)** to **571—101.7(481A)**.

ITEM 6. Adopt the following new rule 571—101.4(481A):

571—101.4(481A) Wild Peregrine falcons. A wild Peregrine falcon permit allows for the capture, possession and use of a wild Peregrine falcon in hunting, subject to 571—Chapter 102. In addition to the following provisions, the holder of a wild Peregrine falcon permit shall comply with 571—101.1(481A), 571—101.2(481A), and 571—101.5(481A) through 571—101.7(481A) as well as other applicable law.

101.4(1) The taking of Peregrine falcons from the wild shall be conducted only by resident master falconers or resident general falconers with at least five consecutive years of field experience in the years immediately preceding the filing of an application as described in 101.4(4) and subject to the following conditions:

a. Nestling birds shall not be taken. Young birds not yet capable of flight shall not be taken. Removal of eggs from nests is prohibited.

b. Only wild Peregrine falcons less than one year old shall be taken, and only between September 20 and October 20.

c. No permittee shall employ any method of take that is injurious to the bird.

d. No more than one wild Peregrine falcon per person may be possessed at any given time.

101.4(2) Recapture. Banded Peregrine falcons that are lost to the wild through accident may be retrapped at any time provided that the department has been advised of the loss and is notified of the attempt to recapture. If the banded raptor is recaptured, the department shall be notified of the recovery within 48 hours.

101.4(3) Previously banded Peregrines. Any wild Peregrine falcon captured with a federal leg band or any research band already attached shall be immediately released at the site of capture, and the band number and location of trapping site shall be reported to the department within 48 hours.

101.4(4) Lottery. Applications for wild Peregrine falcon permits shall be received by the department no later than July 31 of each year. Permit drawing from the names of qualifying applicants will be held at the August commission meeting.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.